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MAY - 8 1998

FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Implementation of the Telecommunications
Act of 1996

Telecommunications Carriers' Use of
Customer Proprietary Network Information
and Other Customer Information

DOCKET FILE COPY ORIGINAL

CC Docket No. 96-115

DA 98-836

**COMMENTS OF PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
IN SUPPORT OF GTE'S PETITION FOR TEMPORARY FORBEARANCE
OR, IN THE ALTERNATIVE, MOTION FOR STAY**

The Personal Communications Industry Association ("PCIA")¹ hereby submits its comments on the Commission's *Public Notice* in the above-captioned proceeding.² As set forth below, PCIA supports GTE Service Corporation's ("GTE") petition³ urging the Commission to

¹ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² FCC *Public Notice*, "Pleading Cycle Established For Comments On Telecommunications Carriers' Use Of Customer Proprietary Network Information And Other Information Request For Deferral And Clarification," FCC 98-836 (May 1, 1998) ("*Public Notice*").

³ See Petition Of GTE For Temporary And Limited Forbearance Or, In The Alternative Motion For Stay, CC Docket No. 96-115 (filed Apr. 29, 1998).

promptly exercise its authority pursuant to Section 10 of the Act and forbear from applying parts of Section 222 or, in the alternative, to stay parts of its *CPNI Order*.⁴

I. INTRODUCTION

On February 26, 1998 the Commission released its *CPNI Order*, which added several provisions to Part 64 of the Commission's rules concerning the use of CPNI in the provision of telecommunications services, including commercial mobile radio services. On April 24, 1998, the Cellular Telecommunications Industry Association ("CTIA") filed a request for deferral for 180 days of the effective date of several of those new rules.⁵ On the heels of CTIA's petition, GTE filed a petition for forbearance from the application of, or, alternatively, for stay of the Commission's new CPNI rules. In response to these filings, the Commission established a pleading cycle in this Docket.⁶ PCIA presents these comments to highlight: (1) the adverse economic impact of the *CPNI Order* on CMRS providers; and (2) the questionable statutory analysis and policies underlying portions of that *Order*.

II. THE SUDDEN CHANGE IN BUSINESS PRACTICES MANDATED BY THE CPNI ORDER WILL WREAK ECONOMIC HAVOC ON THE CMRS INDUSTRY

As currently drafted, the *CPNI Order* will do tremendous economic damage to the highly competitive CMRS industry by effectively preventing carriers from retaining their customers.

⁴ *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information* (Second Report and Order and Further Notice of Proposed Rulemaking), CC Docket No. 96-115 (released February 26, 1998), 63 Fed. Reg. 20326 (April 24, 1998) ("*CPNI Order*" or "*Order*").

⁵ CTIA Request For Deferral and Clarification, CC Docket No. 96-115 (filed Apr. 24, 1998).

⁶ See *Public Notice* at 1.

Unlike the local exchange business, where customers tend to remain with a single carrier, wireless customers are prone to change service providers whenever a more attractive offer presents itself. Therefore, in order to hold on to their existing customers, wireless providers have become extremely adept at presenting these customers with new and improved service offerings as soon as they become available, and before a competing carrier can do so. In the CMRS industry, these new "services" have traditionally included CPE, such as pagers and PCS handsets, and related information services, such as voicemail and other services. Further, in order to market these new offerings in an economical fashion, CMRS providers must know which customers to target. In particular, they must know the size of the customer account, whether the customer is a consumer or a commercial customer, the customer's minutes of usage, and to which services the customer currently subscribes.

The instant *Order* will force the CMRS industry to reverse approximately twenty years of marketing practices on thirty days notice. As noted above, marketing new services—including CPE—to current customers has been a mainstay of the CMRS industry, and is essential to its economic well being. Moreover, wireless carriers, unlike many local exchange carriers, have never been subject to CPNI restrictions, so they had no compliance programs in place, and had not begun to obtain customer consent on April 24, 1998, when they were informed that in 30 days, they would be subject to this new regulatory regime. Worse yet, these new requirements are coming at a time when the industry must modify its customer record software to accommodate the year 2000 changeover.

Without compliance programs in place, wireless providers are vulnerable to FCC forfeitures and possible license revocation. Further, it might take the CMRS industry up to one year to obtain customer consent to market "new" services to these customer. In a low profit

margin, highly competitive industry, such a delay will be devastating. The Commission should therefore forbear from imposing its CPNI requirements on CMRS providers, or, at a minimum, stay the effects of the *CPNI Order* until it has ruled on all petitions for reconsideration in this proceeding.

III. THE CPNI ORDER, AS APPLIED TO THE CMRS INDUSTRY, GOES INEXPLICABLY BEYOND THE MANDATES OF SECTION 222

The *CPNI Order* places consumer privacy interests irreconcilably at odds with the goals of increased competition and rapid technological and economic development in the CMRS marketplace. Section 222 does not, however, mandate such a result. That section of the Act merely requires that the Commission regulate CPNI use consistent with consumer expectations. Curiously, the *CPNI Order* goes well beyond protecting consumer expectations and would apply inflexible, unworkable rules that would defeat consumer expectations and violate the Congressional intent in drafting Section 222. Therefore, PCIA urges the Commission to forbear from applying the following rules (and Section 222 to the extent necessary): (1) Section 64.2005(b)(1) which requires customer approval before a CMRS provider may use CPNI to market mobile equipment and information services; (2) Section 64.2005(b)(3) which prohibits carriers from using CPNI to "win back" a customer; and (3) Section 64.2005(b) to the extent it prohibits the use of CPNI to market voicemail or other similar services.

First, the Commission should forbear from applying Section 64.2005(b)(1) because, as GTE demonstrated in its April 29th Petition, the CPE required for a customer to access commercial mobile services is integral to the provision of CMRS.⁷ Commercial mobile CPE is inextricably linked to the rendering of CMRS because handsets and pagers are not only necessary

⁷ See GTE Petition at 9.

for the service, but they must be properly programmed by the carrier. The clear relationship between CMRS and equipment has led consumers to expect that commercial mobile services will be marketed with CPE. Any Commission rule that effectively prohibits such marketing is more prophylactic than required by either Section 222 or the desire of consumers. In all likelihood, such a rule will have the unintended result of frustrating customers by denying them the benefit of one-stop-shopping for services that include necessary CPE, and preventing carriers from upgrading CPE when they attempt to upgrade the underlying service.

Second, because it is in no way mandated by Section 222, the Commission should forbear from applying the anti-win back rule. In particular, because Section 222 is completely silent on win-back efforts, there is no sound policy reason for the Commission to interpret this statutory section in the manner it has chosen. As proposed, the anti-win back rule will counteract the pro-competitive aims of the Act by hindering direct competition for consumers' commercial mobile business. In order to avoid such an anti-competitive and anti-consumer result, the Commission should forbear from applying this rule.

Lastly, the Commission should forbear from applying its rules to the extent they forbid marketing of voicemail and other information services that are integral to the commercial mobile service with which they are combined. In the CMRS context, such services are nearly indistinguishable from the underlying telecommunications services because consumers have begun to expect that these services will be offered as a complete package. Unfortunately, the Commission's rules, as currently drafted, would promote consumer confusion and inconvenience which, in turn, would damage the economic viability of the CMRS industry.

Although PCIA has limited these comments to a brief discussion of the application of the Commission's rules in three scenarios, there are several other rule changes that it will discuss in

its Petition for Reconsideration of the *CPNI Order*, and a Petition for Forbearance of this *Order*. It is further likely that several other parties will file petitions for reconsideration and forbearance. Therefore, PCIA urges the Commission to forbear from applying its rules (and Section 222 to the extent necessary), *at least* until a more complete record has been assembled. Forbearance, under these circumstances, will ensure that the Commission's actions are administratively efficient and will avoid needless disruption in the marketplace.

IV. CONCLUSION

For each of the reasons stated above, PCIA requests that the Commission forbear from applying its CPNI rules (and Section 222 to the extent necessary) to CMRS carriers. In the alternative, the Commission should immediately stay the effectiveness of its CPNI rules to allow a more complete record to develop on these issues.

Respectfully submitted,

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May 8, 1998